

Exhibit 46

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

6 LEHMAN BROTHERS HOLDINGS, INC., CAUSE NO.

7 et al, 08-13555 (JMP)

8 Debtors.

9 - - - - - x

10 In re

11 LEHMAN BROTHERS, INC., CAUSE NO.

12 Debtor. 08-01420 (JMP) (SIPA)

13 - - - - - x

14

15 U.S. Bankruptcy Court

16 One Bowling Green

17 New York, New York

18

19 January 16, 2013

20 10:03 AM

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22 B E F O R E:

23 HON. JAMES M. PECK

24 U.S. BANKRUPTCY JUDGE

25 ECRO: TB

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1 HEARING re Status Conferences:

2 1) Joint Motion of Lehman Brothers Holdings, Inc. and
3 Litigation Subcommittee of Creditors committee to Extend
4 Stay of Avoidance Actions and Grant Certain Related Relief
5 (ECF No. 33322)

6 2) LBHI's Objection to Proofs of Claim Number 14824
7 and 14826 (ECF No. 30055)

8 3) Hearing to Consider Objections to Purported Claims
9 Transfers to Stichting Value Foundation (ECF No. 32646)

10 4) Motion of Traxis Fund LP and Traxis Emerging
11 Market Opportunities Fund LP to Compel Debtors to Reissue
12 Distribution Checks for Allowed Claims (ECF No. 32163)

13

14 HEARING re Uncontested Matter: First and Final Fee
15 Application of Epiq Bankruptcy Solutions, LLC, as
16 Solicitation and Voting Agent to the Debtors for Allowance
17 and Payment of Compensation for Professional Services
18 Rendered and For Reimbursement of Actual and Necessary
19 Expenses Incurred from September 1, 2011 through December 6,
20 2011 (ECF No. 27762)

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1 HEARING re Adversary Proceedings:

2 1) Walton, et al v Lehman Brothers, Inc., et al

3 (Adversary Case No. 12-01898), Motions to Dismiss

4 2) FirstBank Puerto Rico v Barclays Capital, Inc.

5 (Adversary Proceeding No. 10-04103), Barclays Capital, Inc.

6 Motion for Summary Judgment; FirstBank Puerto Rico Motion

7 for Summary Judgment

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25 Transcribed by: Sheila Orms

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1 P R O C E E D I N G S

2 THE COURT: Be seated, please, good morning.

3 MS. MARCUS: Good morning, Your Honor, Jacqueline
4 Marcus from Weil Gotshal and Manges on behalf of Lehman
5 Brothers Holdings, Inc., and its affiliated debtors. We
6 have a rather short agenda today, Your Honor.

7 The first matter on the agenda relates to the joint
8 motion of Lehman Brothers Holdings, Inc., and the litigation
9 subcommittee of the creditor's committee to extend the stay
10 of avoidance actions.

11 As Your Honor is aware, we filed a motion to extend
12 the stay on December 21st. At that time, we directed the
13 claims agent to serve all of the avoidance action defendants
14 in addition to the master service list. The objection
15 deadline was January 9th, and no objections were filed by
16 the deadline.

17 On Friday, January 11th, it was brought to my
18 attention that some of the defendants in Adversary
19 Proceeding 3547 which has 265 defendants were not served by
20 the claims agent.

21 As set forth in the declaration that we filed
22 yesterday, we immediately directed the claims agent to serve
23 all of the defendants by overnight mail, while we pondered
24 what to do about the situation.

25 Shortly after that, we decided that it would be

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1 appropriate to adjourn today's hearing to the January 30th
2 hearing date, which we've cleared with your clerk, provided
3 that we could get a bridge order because the avoidance
4 action stay and the service deadline currently expire. One
5 is January 18th and the other is January 20th.

6 So, Your Honor, with that, we request that the
7 hearing be adjourned until January 30th, and that the Court
8 enter a bridge order. We did file a notice of adjournment
9 of the hearing yesterday, and in the notice of adjournment,
10 we indicated that the avoidance actions defendant in that
11 particular adversary proceeding would have until January
12 23rd to object to the relief that we're seeking.

13 THE COURT: That all sounds fine to me. It's
14 adjourned till the 30th and you'll get a bridge order.

15 MS. MARCUS: Thank you, Your Honor.

16 The next matter on the agenda is a status
17 conference relating to the proof of claim filed Canary
18 Wharf, and my partner, Peter Isakoff will be handling that.

19 MR. ISAKOFF: Good morning.

20 THE COURT: Good morning. I think there's some
21 attorneys wishing to come forward, so let's just wait a
22 moment.

23 MR. ISAKOFF: May I proceed?

24 THE COURT: Please.

25 MR. ISAKOFF: We're here today because LBHI was the

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1 guarantor of a lease of one of its subsidiaries LBL in
2 London, quite a large building. The claimants Canary Wharf
3 and affiliates were the landlord, and by stipulation that
4 was so ordered by Your Honor on September 1, 2011, they have
5 limited their claims to \$780 million.

6 We filed an objection to the claims last summer.
7 They opposed them. We filed a reply last week. There are
8 quite a number of disputed issues of English law. There are
9 opinions of Queen's counsel submitted by both sides, and one
10 of the issues we raise, if we were successful, would lead to
11 the expungement of the guaranteed claim in its entirety.
12 The others, to the extent that their claims survive would
13 involve a number of factual issues, in addition to English
14 law issues, and as to those, should the claim not be
15 expunged in its entirety, we would like to have fact and
16 expert discovery, both as to liability and damages.

17 We have started to try to talk about a procedure as
18 to how to move forward here, whether to have oral argument
19 on one or more issues before Your Honor, and then to the
20 extent that the claims survive, proceed the discovery or
21 exactly how to proceed. Those conversations begun this
22 morning out in the hallway. I think it's fair to say are
23 preliminary in nature. Have not thus far resulted in
24 anything that we have to present to Your Honor as a way to
25 proceed.

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1 And I guess my suggestion would be that we perhaps
2 set a date with some time for oral argument, and perhaps in
3 advance of that, have enough discussions such that perhaps
4 we can reach an agreement on precisely what issues to
5 present at that time, or whether we should simply go into
6 discovery, that kind of thing.

7 THE COURT: I'm not entirely clear on what you
8 would be arguing on a preliminary basis, without the benefit
9 of discovery and a full factual record.

10 MR. ISAKOFF: There is one issue as to which I
11 believe the facts are effectively undisputed, and that is as
12 part of the landlord's dealings with the tenant without our
13 knowledge where they entered into what we've called a
14 forfeiture letter, they reached an agreement with the
15 tenant, that they would abandon their administrative claim
16 for unpaid rent that had accrued to that point, in exchange
17 for a payment of one and a half million pounds, which in the
18 opinion of our Queen's counsel, resulted in the guarantee
19 against -- claim against us being entirely discharged.

20 That is effectively a question of English law,
21 which we could argue to Your Honor. And if we were
22 successful, that would obviate the need for anything else in
23 the case. But that's the one issue that really is
24 susceptible to that type of treatment.

25 THE COURT: This is the first time that I can

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1 recall that issues relating to LBL have been presented to
2 me. To the extent that there was an argument that the
3 administrative claim of LBL was being affected, was that a
4 claim in this proceeding, or was that a claim in the UK
5 proceeding?

6 MR. ISAKOFF: That was a claim in the UK
7 proceeding, I believe, Your Honor, that the landlord would
8 have an administrative claim. I believe it was -- I'm going
9 on memory now, but about 30 million pounds for unpaid rent,
10 it might have been dollars, I'm not sure which it was, and
11 which was released as a priority claim, in exchange for a
12 payment of one and a half million pounds. And obviously
13 that increased LBHI's liability under the guarantee, because
14 that administrative expense claim presumably could've been
15 paid in full in that proceeding. And it's depending of our
16 QC that that visciated the guarantee entirely, because it
17 was done without our knowledge and consent.

18 THE COURT: Okay. Well, there are conflicting
19 opinions of counsel, so it's going to be difficult to decide
20 that without the benefit of context. And perhaps without
21 the benefit of live witnesses. But I'll hear what the
22 parties have to say about procedure.

23 MR. ISAKOFF: Okay.

24 MR. TULCHIN: Your Honor, good morning, Your Honor,
25 David Tulchin from Sullivan and Cromwell for Canary Wharf.

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1 In one respect I think we agree with counsel, and
2 that is that there are issues of English law that are
3 potentially determinative here, and to which no discovery is
4 necessary. I have two suggestions about how to proceed,
5 Your Honor, if I might. And we did try to -- we had a brief
6 discussion about this just a few moments ago in the hallway,
7 but were not able to reach any agreement at least thus far.

8 First, Your Honor, I do think it would make sense,
9 and here's where I think we agree, for the Court to resolve
10 English law questions at the outset. Because potentially,
11 they are determinative. I think it would be useful to the
12 Court to do so after you've heard from the two English
13 lawyers, the two Queen's counsel. And I suggest that we
14 have a brief evidentiary hearing. My guess is that it would
15 take a day and a half for the two lawyers to testify. I
16 think it would be helpful for the Court in understanding the
17 contract and the issues of English law that have been
18 presented.

19 For example, Mr. Isakoff referred to his QC, his
20 opinion goes on for 43 pages. It's 109 paragraphs, not all
21 of that, by any means, I think will be all that relevant to
22 the type of hearing that I'm proposing. But there are some,
23 let's say, some little nooks and crannies of English law.
24 Our QC, whose name is Laurence Rabinowitz, of course, has
25 views that are quite different than Mr. Millett (ph).

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1 So before we have discovery, I think it would be
2 helpful to have, assuming the Court has the time, of course,
3 a brief evidentiary hearing.

4 And secondly, Your Honor, and this is I think more
5 in the way of a detail, but objections to the claim were
6 filed last August without the submission of any opinion from
7 an English barrister. In fact, there was only a very scant
8 mention of English law in the papers that were filed on the
9 objection.

10 We responded in October with our papers, including
11 the opinion of Mr. Rabinowitz. And it was only in reply
12 that they came forward with their Mr. Millett, who has
13 addressed lots of questions of English law in reply. And I
14 wonder if we couldn't get leave from the Court to submit a
15 brief surreply since our QC, of course, did not have the
16 opportunity to address the issues of English law that are
17 now being stated to be determinative of at least the
18 preliminary stage of our claim.

19 And I would propose to submit a surreply, Your
20 Honor, at the Court's convenience, perhaps in three weeks if
21 that makes sense.

22 THE COURT: I have insufficient information at this
23 point concerning the nature of the dispute between two
24 obviously eminent English barristers, concerning a point of
25 English law that may be familiar to justices of the high

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1 court, but that are to me, matters of foreign law.

2 It is unclear to me from what you've told me, and
3 frankly from what little I've read of this in preparing for
4 today's status conference, whether the disagreements
5 concerning the application of English law to this dispute
6 are disagreements based upon unsettled law, or good faith
7 disagreements as to the application of black letter law to
8 the leasing question, and to the damages related to the
9 claims being asserted.

10 I looked generally at the papers that you filed,
11 and believe this to be a complex matter unless it can be
12 disposed of as a threshold question of law, in which you're
13 entitled or not entitled to the damages you seek.

14 It occurs to me that rather than simply stating
15 yes, go ahead and file a surreply, that it would be sensible
16 for the parties to continue the discussions that started
17 this morning in the hallway. And for you to continue to
18 meet and confer and to develop a well considered set of
19 prehearing procedures relating to the evidentiary hearing
20 that you propose.

21 It seems to me that some form of evidentiary
22 hearing would be desirable, certainly from my perspective,
23 since to read submissions is never quite as compelling, as
24 hearing someone with a particularly well-turned English
25 accent speak to me from the witness stand.

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1 So my suggestion is that you should have an
2 opportunity to respond, but I believe that that opportunity
3 should be part of a broader understanding that the parties
4 can reduce to writing, and I can so order relating to
5 prehearing procedures. I'll certainly make time for such a
6 hearing.

7 I would also suggest that during the course of
8 developing this prehearing set of procedures, that the
9 parties give some thought to submitting this issue to
10 arbitration or mediation. Arbitration in London before
11 perhaps a retired justice of the high court, or mediation
12 involving someone who is, by disposition and background, an
13 expert in matters of this sort might be useful for you to
14 consider.

15 Additionally, it seems to me that the matters that
16 are to be presented here are susceptible potentially to
17 mediation, and that some thought be given to that. I'm not
18 directing it, I'm not even recommending it. I'm just saying
19 that some thought might be given to whether that makes sense
20 under these circumstances.

21 MR. TULCHIN: Of course, Your Honor, happy to
22 consider that. I think these are very good suggestions.

23 THE COURT: And in developing a prehearing
24 stipulation, my suggestion is that you contact my chambers,
25 so that you can include several hearing dates. If you think

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1 it's a two-day hearing, let's have two days at a point in
2 time where you would reasonably anticipate will be suitable
3 for the occasion.

4 Mr. Isakoff?

5 MR. ISAKOFF: Yes, Your Honor, if I might just for
6 one moment. This is a suggestion I heard for the first time
7 this morning in the hall, to have a hearing where the two
8 QCs testify. And it seems to me that before you were to
9 bring them over and to try to deal with the whole list of
10 issues that they've given opinions on, there are a number of
11 those as to which we would want to have a developed factual
12 record. Not just on damages, but on issues going to
13 liability under various theories.

14 And it seems to us that discovery should precede
15 the kind of effort to bring the QCs over and have Your Honor
16 take up time with a hearing for one and a half to two days.

17 THE COURT: I hear what you're saying, and I'm not
18 ready to say that you're right, but you might be. And my
19 thought on this is that, that's a subject to be considered
20 when you meet and confer to discuss procedures.

21 Additionally, it seems to me that many of the
22 factual matters here are discernible, identifiable, and in
23 all likelihood susceptible to a stipulation of facts, rather
24 than the burdens of depositions or formal discovery. And my
25 suggestion is that since the documents that relate to this,

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1 no doubt, have already been identified, and that the
2 individuals who know something about those, no doubt, are
3 known to the parties. That some consideration be given to
4 developing a list of pertinent facts that I can then take
5 into consideration at the time of argument, with regard to
6 how those facts should be interpreted.

7 MR. ISAKOFF: Your Honor, I -- in saying anything,
8 I am, this morning, I fully understand that Your Honor is in
9 no position to rule on any of these things. I just did not
10 want to sit down and suggest that we were in agreement with
11 the things that were being said here.

12 In terms of developing a factual stipulation, in
13 fact, there are many things that we do not know that are
14 pertinent here. And it very well may be we can come in with
15 a list of stipulated facts, after we've had a chance to find
16 out what's in the -- in our adversary's files.

17 MR. TULCHIN: Your Honor, if I may. I agree with
18 the Court that perhaps this is the sort of thing that we can
19 sit down and talk about. I'm hopeful we can come to some
20 resolution about it.

21 There -- it may be that there are some facts, I'm
22 quite sure there are some factual issues that go only to the
23 question of damages. And those, for example, it seems to
24 me, should be deferred until after an adjudication of these
25 English law questions.

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1 Those would be -- those factual issues potentially
2 could be the subject of a great deal of discovery I think.
3 But there may be fact issues on liability issues, and
4 liability questions, that we can agree, should be the
5 subject of some limited discovery. I'm happy to consider
6 that. And I think maybe Mr. Isakoff and I should --

7 MR. ISAKOFF: We'll talk.

8 MR. TULCHIN: -- meet about this and spend some
9 time going through the Court's suggestions.

10 THE COURT: We all agree, you should talk.

11 MR. ISAKOFF: Thank you, Your Honor.

12 MR. TULCHIN: Thank you, Your Honor.

13 THE COURT: And my suggestion is just so we can
14 keep a watch on this, that this be an agenda item for the
15 February omnibus hearing calendar only if you are unable to
16 reach an understanding concerning procedures.

17 So that's basically a 30-day window to reach an
18 understanding. And if you can't, to come in and explain
19 what the problems are.

20 MR. TULCHIN: Very good, Your Honor.

21 THE COURT: Okay.

22 MR. TULCHIN: Thank you, sir.

23 THE COURT: Thank you.

24 MR. ISAKOFF: Your Honor, I've been handed the
25 agenda. I'm told that the next one is a hearing to consider